# VIRGINIA DEPARTMENT OF EDUCATION

DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

# CASE CLOSURE SUMMARY

School Division Name of Parent

09/13/2018

Name of Student Date of Dismissal

Patrick T. Andriano Kandise Lucas & Sa’ad El-Amin

Counsel representing LEA Advocates Representing Student

Public Schools

Party Initiating Hearing Prevailing Party

ISSUES FOR DETERMINATION

This case was dismissed with prejudice.

Signature

**William S. Francis, Jr.**

**Printed Name of Hearing Officer**

# VIRGINIA DEPARTMENT OF EDUCATION

DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES

DUE PROCESS HEARING

**IN RE:**

# INTRODUCTION

This case comes before me as an Amended Due Process Complaint. The original Complaint began on or about November 4, 2017 by the appropriate filing. Testimony and evidence was taken once the Amended Complaint was filed over a period of eight days and a time period from the filing date of December 17, 2017 to the final hearing time of June 28, 2018. The transcript of the evidence, which I have studied, reviewed and reread several times is an accumulation of over two-thousand pages. Twelve witnesses testified. The exhibits admitted into evidence are estimated to be approximate fifteen hundred pages. Various days of continuance for the taking of evidence were necessitated by many circumstances, e.g. witnesses not available because of issues with subpoenas and the determination of some of those issues through the Circuit Court, a snow blizzard and the news of hospice care being rendered with the eventually sad passing of the spouse of one of the student’s advocates. With the exception of testimony from a police officer, every witness herein was involved with and had information about the education of this student.

Without question, this young man has numerous issues that have some impact on his education required under the law. He is now an adult and at all times following this due process complaint thereafter, is a competent adult student. The disability label under his severed IEP’s is Emotional Disturbed. Other labels and diagnosis, medical and educational has been e.g. Autism, ADHD, Anxiety Disorder, Depressive Disorder and Disruptive Behavior of Childhood possibly oppositional Defiant Disorder. The student is intelligent and has considerable educational abilities. Although the student was present at some portion of the evidentiary hearings, he did not testify or offer evidence by exhibit or otherwise. I very much wanted to hear from the student as to his educational intentions and wishes. He is an adult and has achieved a high school diploma via a GED program. The student was quite competently represented by two knowledgeable and experienced advocates who presented his case and called witnesses that they deemed to be appropriate.

In addition to the eight days of testimony nearly fifteen-hundred pages of exhibits were introduced. Although the exhibits varied as to the relevance and creditability of the evidence attributed thereto, each was related in various degrees to the education of the student. I applied very informal rules of evidence and allowed all exhibits to be introduced with the standard being the weight and the relevance of the exhibit.

The law, IDEA, regulations and United States Supreme Court decisions that I have applied to make my decision are only referred to herein as the *Rowley Standard*  and the *Endrew F Standard.* No other citations are included.

What is required from the School Board is a legally appropriate determination of the student’s need for special education services. To reach that determination the School Board must under the law, properly assess the disability and identify and determine the appropriate need for special education. Upon a proper determination of special education need and qualification, the school system must then put into place and offer and provide appropriate educational services which allow and provide for legally determined educational progress for the student.

The basic questions to be answered are: In the development of an IEP, has the school agency complied with procedures set forth in the IDEA; If so, is the individualized educational program developed through IDEA’s procedures reasonably calculated to enable the student to make progress in light of the student’s circumstances. The student clearly has the burden of proving beyond a preponderance of the evidence the issues described. The questions in the preceding paragraph provide the legal basis upon which I have made my determination of facts herein and my final decision. I believe it is important to also reference that a broad evidentiary standard was applied in regard to the witnesses and their testimony. This was applied in an attempt to allow the student to present any evidence that may be relevant. This evidentiary standard took the form of allowing a witness who had not been identified. Allowing that witness to testify was contrary to the IDEA regulations.

# DECISION

Without question, the burden of proof is upon the student to prove his case by a preponderance of the evidence. That burden herein is considered by me relying on the evidence from Dr. , Dr. , Dr. and upon the adroit cross examination of the School Board’s experts by the advocate.

Although the student raised and produced evidence and argument about many so-called “labeled disabilities” as being improper and therefore determinative of the lack of appropriate services. I do not make that finding. The student was labeled as Emotional Disturbed. I find that every conceivable issue of educational services has been considered and delivered by the school Board no matter what the label. I find that the IEP was reasonably calculated to enable this student to make progress in light of circumstances. Even if the school system did not classify this student with “Autism” or any other labels, it does not mean that the school system has violated its duty. To the contrary, the multiple evaluations that the school system conducted demonstrate compliance with all issues of child find, eligibility, evaluations, the IEP and placement in the least restrictive environment. I find that the school system has met the legal standard by providing this student with the services that have resulted in academic, social and behavioral progress. The IDEA does not require school systems to affix a student with a particular label.

To meet its substantial obligation under the IDEA, the school system must offer a IEP reasonably calculated to enable a student to make progress in light of that students circumstances. Appropriate progress must be determined from case to case. The odyssey of this IEP turns on the unique circumstances for this student. The question is whether the IEP is reasonable and I find that it is. The issue is not whether the IEP is ideal.

The burden in this case was simply not carried. What was clearly shown, beyond any proof standard, was that this adult student did, had, and was showing significant progress in the educational programs during 2016 and 2017 and particularly in the private school placement at xxxxxxx Academy. In making this decision, I have relied particularly upon the creditability of all of the witnesses. I find and have adjudged from all of the testimony, especially the School Board’s witnesses, as determinatively establishing the student’s failure to carry his burden in producing the preponderance of the evidence. I have, in ascertaining the evidence and the creditability of the witnesses and especially the witnesses that I find to be most creditable “xxxxxxx, xxxxxx, xxxxxxxxx and xxxxxxxx” considered the demeanor of the witnesses on the witness Standard, each and every one of their apparent candor and fairness, bias if any, their intelligence, their interest or lack of it in the outcome of the case and their opportunity and lack of it for knowing the truth and having observed the facts about which they testified.

Although I don’t believe it is required because I have determined that the student has failed to carry his burden of proof, I briefly decide other issues as follows:

There has been a lack of evidence of any conspiracy by the School Board in this case to deny a FAPE on any racial bias as claimed and testified to by Dr. .

I find nothing untoward or improper about the last meeting on or about November 3, 2017 labeled an Exit IEP. I find that to be a summary of performance not required but perfectly appropriate. I find that this meeting was chaotic. The cause was the conduct of the student’s advocates at the meeting.

I find no predetermination of anything by the School Board nor do I find the GED process and the awarding of a diploma to this student as in any way improper. I find the student’s achievement of a diploma through the GED process to be his election and find quite clearly under the law, that he is still entitled to services as an adult. I find the student’s achievement of a diploma through the GED process to be his election.

Therefore, it is my decision the Student has failed to carry the required burden of proving his case by preponderance of the evidence and I have decided accordingly that the case must be dismissed with prejudice. The evidence overwhelmingly shows compliance with IDEA and shows progress by this student and utterly fails to show any lack of appropriateness in the programs delivered and offered by Public Schools. **SO ORDERED.**

ENTER:

William S. Francis, Jr.

Hearing Office

Right of Appeal. (34CF 3000.516;516§ 22.1-214D of the Code of Virginia).

1. A decision by the special education hearing officer in any hearing, including an expedited hearing is final and binding unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision. The appeal may be filed in either state or circuit court or a federal district court without regard to the amount controversy. The district court of the United States have jurisdiction over action brought under § 1415 of the Act without regard to the amount in controversy.